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9 Attorneys for Defendant  
10 NESTLÉ USA, INC.

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN JOSE DIVISION**  
14

15 JUDE TRAZO and MARIANNA BELLI,  
individually and on behalf of all others similarly  
16 situated,

17 Plaintiffs,

18 v.

19 NESTLÉ USA, INC.,

20 Defendant.  
21  
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Case No. CV12-02272 PSG

**JOINT STIPULATION RE SETTING  
SCHEDULE FOR RESPONDING TO  
FOURTH AMENDED COMPLAINT  
(erroneously filed as Fifth Amended  
Complaint)**

[~~Proposed~~ Order Attached]

1 Plaintiffs Jude Trazo and Marianna Belli and Defendant Nestlé USA, Inc. (“Nestlé  
2 USA”), by and through their respective counsel of record, enter into the following stipulation,  
3 subject to Court approval, to set a date to respond to the fourth amended complaint (“4AC”):

4 WHEREAS, as part of the Case Management Conference proceedings held on March 25,  
5 2014, plaintiffs indicated their desire to file a fourth amended complaint;

6 WHEREAS, the parties filed a post-conference report relating to same on April 3, 2014  
7 (Dkt. 108);

8 WHEREAS, the issue having been considered by the Court, plaintiffs were permitted to  
9 file a fourth amended complaint (Dkt. 111);

10 WHEREAS, plaintiffs instead filed a motion for reconsideration (Dkt. 119), which the  
11 Court granted on July 10, 2015, allowing plaintiffs to re-allege their claim for restitution based  
12 on unjust enrichment/quasi-contract (Dkt. 123);

13 WHEREAS, plaintiffs filed the 4AC on July 28, 2015 (Dkt. 124), which was erroneously  
14 labeled the fifth amended complaint;

15 WHEREAS, the 4AC contained a cause of action for breach of implied warranty, which  
16 plaintiffs have agreed to dismiss;

17 WHEREAS, consistent with proceedings in the case to date and to preserve party and  
18 Court resources, the parties agree that commencement of litigation activities (including initial  
19 disclosures and discovery) shall await a determination on Nestlé USA’s anticipated motion to  
20 dismiss the 4AC; and

21 WHEREAS, the parties believe it desirable to set a briefing schedule to accommodate the  
22 parties’ and Court’s schedule with respect to the anticipated motion;

23 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, between  
24 plaintiffs and Nestlé USA, subject to approval from the Court, that:

- 25 • Nestlé USA shall move to dismiss the 4AC on or before September 25, 2015;
- 26 • Plaintiffs shall oppose Nestlé USA’s motion to dismiss on or before October 23,  
27 2015; and
- 28 • Nestlé USA shall reply to plaintiffs’ opposition on or before November 6, 2015.

1 Dated: August 17, 2015

CHARLES BARRETT, P.C.

2  
3 by: /s/ Charles Barrett  
4 Charles Barrett  
Attorneys for Plaintiffs

5  
6 Dated: August 17, 2015

MAYER BROWN LLP  
Carmine R. Zarlenga  
Dale J. Giali

7  
8 by: /s/ Dale J. Giali  
9 Dale J. Giali  
Attorneys for Defendant  
10 NESTLE USA, INC.

11  
12 **SIGNATURE ATTESTATION**

13 Pursuant to the Northern District of California Civil L.R. 5-1(i)(3), I hereby certify that  
14 the contents of this document are acceptable to Charles Barrett, counsel for plaintiffs, and that I  
15 have obtained Mr. Gore's authorization to affix his electronic signature to this document.

16  
17 /s/ Dale J. Giali  
Dale J. Giali

18  
19  
20 **ORDER**

21 PURSUANT TO THIS STIPULATION, IT IS SO ORDERED.

22 Dated: 8/17/2015

23  
24 Paul S. Grewal  
25 Hon. Paul S. Grewal  
United States Magistrate Judge